

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM J. COMER,	§	
	§	No. 292, 2010
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	Cr. ID Nos. 0606016693
Plaintiff Below,	§	0604011378
Appellee.	§	

Submitted: September 3, 2010

Decided: December 1, 2010

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

ORDER

This 1st day of December 2010, upon consideration of the briefs on appeal and the Superior Court record, it appears to the Court that:

(1) The appellant, William J. Comer, filed this appeal from the Superior Court's May 5, 2010 sentence on his fifth violation of probation (VOP). We conclude that the May 5, 2010 sentence must be vacated and this matter remanded for resentencing.

(2) In 2006, Comer pled guilty to Reckless Endangering in the First Degree (RE) and Possession with Intent to Deliver Cocaine (PWITD). For RE, Comer was sentenced to five years at Level V incarceration suspended immediately for decreasing levels of supervision. For PWITD, Comer was

sentenced to two years at Level V suspended immediately for one year of probation.

(3) On May 5, 2010, Comer was adjudged guilty of his fifth VOP. For RE, Comer was sentenced to three years and eight months at Level V suspended after two years and six months for decreasing levels of supervision. For PWITD, the sentence was continued as previously (and originally) imposed, *i.e.*, two years at Level V suspended immediately for one year of probation. This appeal followed.

(4) In the answering brief on appeal, the State concedes, based on a thorough review of Comer's history of incarceration, that a sentence of no more than two years and six months should have been imposed for Comer's fifth VOP of his RE conviction. In view of the State's factual assertions as set forth in the answering brief filed in this appeal, the Court will remand this matter for resentencing.

NOW, THEREFORE, IT IS ORDERED that the May 5, 2010 sentence is VACATED, and this matter is REMANDED to the Superior Court for the resentencing of Comer with the assistance of counsel. Jurisdiction is not retained. The mandate shall issue forthwith.

BY THE COURT:

/s/Henry duPont Ridgely
Justice